IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16715 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAILESH BHOLASIGH RAJPUT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16715 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

Ms P B Sheth, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 22/03/2004

ORAL JUDGEMENT

The petitioner-detenu has preferred this petition under Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 19.9.2003 passed by respondent No. 2 under section 3(2) of the Gujarat Prevention of Anti-social Activities At, 1985 (for short, 'the PASA Act') on the ground that the petitioner was likely to commit breach of public peace as the petitioner was involved in offences punishable under sections 66 (1)(b), 65 (E) and 65 (A) read with section 81 of the Bombay Prohibition Act.

2. It was alleged against the petitioner that he along with three other persons was involved in the offences punishable under section 66 (1)(b), 65 (E) and 65(A) as well as 81 of the Bombay Prohibition Act, 1949, that the said offence was registered on 27.8.2003 before DCB police station being CR No.5717 of 2003. It also appears that on account of the aforesaid offences registered against those persons, the present petitioner was treated to be a bootlegger and, therefore, he was detained by the impugned order dated 19.9.2003 by respondent no.2 herein. The petitioner has challenged the above order stating that the petitioner was not a bootlegger and his alleged bootlegging activities did not amount to a threat to Public Order and, therefore, the petitioner could not have been detained. Therefore, the petitioner has prayed to quash and set aside the impugned order of detention and to set him at liberty forthwith.

3. On receiving the petition, rule was issued and in response to the service of notice of rule, Ms. P B Sheth, learned AGP has appeared. I have heard the learned Advocates for the parties and perused the papers. During the course of hearing, learned Advocate for the petitioner has drawn my attention to an order dated 10.3.2004 recorded by this Court in Special Civil Application No.16716 of 2003 wherein this Court has held that the petitioner could not be treated to be bootlegger and his activities did not amount to a threat to public order and, therefore, the petition was allowed and the detention order passed against the detenu was set aside. It is not much in dispute that the petitioner in the said petition was also involved in the same set of offences and there was a common FIR being CR No.5717/2003. Even FIR at page 19 also clearly suggests that there were four offenders involved in the said offence and the present petitioner was one of them.

4. Having regard to the said FIR and other police papers and considering the judgment of this Court, it is clear that the petitioner is on par with the case of the said detenu in the aforesaid Special Civil Application

and, therefore, the petitioner will be justified in seeking similar treatment which was extended to the said detenu in the said petition. Considering the principle of parity, the petitioner will also be required to be dealt with similarly as the cases are similarly situated. In other words, when the detenu in the said petition has been released and the detention order has been treated to be illegal, it would be required to be followed in the present petition also.

5. For the foregoing reasons, on adopting the principle of parity in respect of two identically situated persons, this petition is allowed. The impugned detention order dated 19.9.2003 passed by respondent no.2 detaining the petitioner under section 3(2) of the PASA Act is quashed and set aside. The detenu Shailesh Bholasingh Rajput is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute accordingly. D.S. permitted.

[D P Buch, J.]
msp